

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

PATRICK AND ELAINE
SCHRODER

Plaintiffs,

VS.

NATIONWIDE PROPERTY AND
CASUALTY INSURANCE and CURTIS
MARTIN

Defendants.

[illegible]

Case No. _____

Jury Demand

NOTICE OF REMOVAL

Defendants Nationwide Property and Casualty Insurance Company and Curtis Martin (“Defendants”) file this Notice of Removal of the above-styled action pursuant to 28 U.S.C. §§ 1446(a) and would respectfully represent and show unto this Court the following:

A. Introduction

1. Pursuant to Local Rules 3 and 81, Defendant attaches an index of matters being filed to this Notice, its Civil Cover Sheet, Cause No. 15-11-12639's docket sheet, and list of online filings. *See Exhibits A through E.*

2. On or about November 30, 2015, Plaintiffs Patrick Schroder and Elaine Schroder (“Plaintiffs”) initiated a state-court lawsuit against Defendants Nationwide Property and Casualty Insurance Company and Curtis Martin in the 284th District Court of Montgomery County, Texas styled *Patrick and Elaine Schroeder v. Nationwide Property and Casualty Insurance and Curtis Martin*; pending as Cause No. 15-11-12639 (“the state court action”). In the state court action, Plaintiffs seek actual damages for breach of contract, breach of the duty of good faith and fair dealing, violations of the Texas Insurance Code, violations of the Texas Deceptive Trade

Practices Act, and fraud. Further, Plaintiffs seek attorneys' fees, treble damages, exemplary damages and 18% interest. *See Plaintiffs' Original Petition*, attached hereto as Exhibit "D".

3. The attorneys involved in the action being removed are listed as follows:

Party and Party Type

Attorney(s)

Patrick Schroder - Plaintiff

Chad T. Wilson
State Bar No. 24079587
Chad T. Wilson Law Firm PLLC
1322 Space Park Drive, Suite A155
Houston, Texas 77058
832.415.1432

Elaine Schroder - Plaintiff

Chad T. Wilson
State Bar No. 24079587
Chad T. Wilson Law Firm PLLC
1322 Space Park Drive, Suite A155
Houston, Texas 77058
832.415.1432

Nationwide Property and Casualty
Insurance Company - Defendant

Randall G. Walters
Texas Bar No. 20819480
Walters, Balido & Crain, L.L.P.
Meadow Park Tower
10440 N. Central Expy, Suite 1500
Dallas, TX 75231
Telephone (214) 749-4805
Facsimile: (214) 760-1670

Curtis Martin – Defendant

Randall G. Walters
Texas Bar No. 20819480
Walters, Balido & Crain, L.L.P.
Meadow Park Tower
10440 N. Central Expy, Suite 1500
Dallas, TX 75231
Telephone (214) 749-4805
Facsimile: (214) 760-1670

4. The name and address of the court from which the case is being removed is:

The Honorable Cara Wood
284th Judicial District Court, Montgomery County, Texas

301 North Main, Suite 201
Conroe, Texas 77301
936.539.7861 – phone
936.538.3572 – fax

B. Notice of Removal Timely

5. Defendants Nationwide Property and Casualty Insurance Company and Curtis Martin were served with process and a copy of Plaintiffs' suit on December 4, 2015 and December 17, 2015, respectively. *See* Exhibit "E". Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is filed within thirty (30) days after receipt by Defendants, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which the action or proceeding is based. Consequently, this Notice of Removal is timely.

C. Complete Diversity

6. Pursuant to the state court action, Plaintiffs Patrick and Elaine Schroder are residents of Montgomery County, Texas and citizens of Texas.

7. Defendant Nationwide Property and Casualty Insurance Company is now, and was at all times relevant hereto, a citizen of the state of Ohio, incorporated in the state of Ohio, and having its principal place of business in the state of Ohio.

8. Defendant Curtis Martin is a resident of Huntsville, Alabama and is a citizen of Alabama.

9. In light of the foregoing, the parties are of completely diverse citizenship. *See* 28 U.S.C. §§ 1332(a), 1441(b).

D. AMOUNT IN CONTROVERSY

10. Plaintiffs' Original Petition alleges actual damages, seeks three times the amount of actual damages (actual damages alleged \$37,628.45 and three times this amount equals \$112,885.35), and seeks attorneys' fees, interest and exemplary damages. Exhibit D at 14-17.

11. In determining the amount in controversy, the court may consider “policy limits ... penalties, statutory damages, and punitive damages.” *St. Paul Reinsurance Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998); *see Ray v. State Farm Lloyds*, No. CIV.A.3:98-CV-1288-G, 1999 WL 151667, at *2-*3 (N.D. Tex. Mar. 10, 1999) (finding a sufficient amount in controversy in plaintiff’s case against their insurance company for breach of contract, fraud, negligence, gross negligence, bad faith, violations of the Texas Insurance Code, violations of the Texas Deceptive Trade Practices Act, and mental anguish); *Fairmont Travel, Inc. v. George S. May Int’l Co., et al.*, 75 F.Supp.2d 666, 668 (S.D. Tex. 1999) (considering DTPA claims and the potential for recovery of punitive damages for the amount in controversy determination); *Chittick v. Farmers Ins. Exchange*, 844 F.Supp. 1153, 1155 (S.D. Tex. 1994) (finding a sufficient amount in controversy after considering the nature of the claims, the types of damages sought, and the presumed net worth of the defendant in a claim brought by the insureds against their insurance company for actual and punitive damages arising from a claim they made for roof damages).

E. ALL PLEADINGS OF STATE COURT ACTION ATTACHED AS EXHIBITS

12. Copies of all pleadings, process, orders, and other filings in the state court action are attached to this notice as required by 28 U.S.C. § 1446(a). *See* Exhibit E.

F. BASIS FOR REMOVAL

13. Because this is a civil action of which the District Courts of the United States have original jurisdiction, this case may be removed by this Court pursuant to 28 U.S.C. § 1446(b). Further, because Plaintiffs are citizens and residents of Texas, Defendants are citizens and residents of Ohio and Alabama, and since the amount in controversy exceeds \$75,000.00, the Court has subject matter jurisdiction based on diversity of citizenship and residency. 28 U.S.C. § 1132. As such, this removal action is proper.

G. FILING OF NOTICE WITH STATE COURT

14. Promptly after filing this Notice of Removal, Defendants will give written notice of the removal to Plaintiffs through their attorney of record and to the clerk of the state court action.

H. JURY DEMAND

15. Plaintiffs made a jury demand in state court. Defendants also request a jury demand at this time.

PRAYER

16. WHEREFORE, PREMISES CONSIDERED, Defendants Nationwide Property and Casualty Insurance Company and Curtis Martin request that this Court proceed with the handling of this cause of action as if it had been originally filed herein, that this Court make such orders, if any, and take such action, if any, as may be necessary in connection with the removal of the state court action to this Court, and that it have such other and further relief to which it may show itself entitled.

Respectfully submitted,

WALTERS, BALIDO & CRAIN, L.L.P.

BY: /s/ Randall G. Walters
RANDALL G. WALTERS - 20819480
Meadow Park Tower
10440 N. Central Expy, Suite 1500
Dallas, Texas 75231
214/347-8381 - FAX
214/347-8380 - DIRECT
214/749-4805 - MAIN
Email: randy.walters@wbclawfirm.com
ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that on the 29th day of December, 2015, a true and correct copy of the above and foregoing was forwarded to all counsel of record in accordance with the Federal Rules of Civil Procedure.

/s/ Randall G. Walters

RANDALL G. WALTERS

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

PATRICK AND ELAINE
SCHRODER

Plaintiffs,

VS.

NATIONWIDE PROPERTY AND
CASUALTY INSURANCE and CURTIS
MARTIN

Defendants.

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Case No. _____

Jury Demand

INDEX OF MATTERS BEING FILED

DEFENDANTS NATIONWIDE PROPERTY AND CASUALTY INSURANCE
COMPANY AND CURTIS MARTIN' ("Defendants") NOTICE OF REMOVAL:

EXHIBIT A: Index

EXHIBIT B: Civil Case Cover Sheet

EXHIBIT C: Docket Sheet and list of filings from state court action (Cause No. Cause No. 15-
11-12639)

EXHIBIT D: Plaintiffs' Original Petition

EXHIBIT E: State Court Pleadings and Filings

Respectfully submitted,

WALTERS, BALIDO & CRAIN, L.L.P.

BY: /s/ Randall G. Walters
RANDALL G. WALTERS - 20819480
Meadow Park Tower
10440 N. Central Expy, Suite 1500
Dallas, Texas 75231
214/347-8381 - FAX
214/347-8380 - DIRECT
214/749-4805 - MAIN
Email: randy.walters@wbclawfirm.com
ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that on the 29th day of December, 2015, a true and correct copy of the above and foregoing was forwarded to all counsel of record in accordance with the Federal Rules of Civil Procedure.

/s/ Randall G. Walters
RANDALL G. WALTERS

EXHIBIT B

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Patrick Schroder
Elaine Schroder

DEFENDANTS

Nationwide Property and Casualty Insurance Company
Curtis Martin

(b) County of Residence of First Listed Plaintiff Montgomery County

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Franklin County, Ohio

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Chad T. Wilson Law Firm PLLC
1322 Space Park Drive, Suite A155
Houston, Texas 77058

Attorneys (If Known)

Walters Balido & Crain, LLP
10440 N. Central Expressway, Suite 1500
Dallas, Texas 75231

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

12/29/2015

SIGNATURE OF ATTORNEY OF RECORD

/s/Randall G. Walters

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

EXHIBIT C

[Skip to Main Content](#) [Logout My Account](#) [Search Menu](#) [New Civil Search](#) [Refine Search](#) [Back](#)
Location : All Courts [Help](#)**REGISTER OF ACTIONS**

CASE NO. 15-11-12639

 Patrick Schroder, Elaine Schroder VS. Nationwide Property and Casualty
 Insurance Company, Curtis Martin
§
§
§
§
 Case Type: **Contract**
Consumer/Comm/Debt
>\$100,000 but <\$200,000
 Date Filed: **11/30/2015**
 Location: **284th Judicial District Court**
PARTY INFORMATION

Defendant	Martin, Curtis Huntsville, AL 35802-3210	Attorneys RANDALL G WALTERS <i>Retained</i> 214-741-4805(W)
Defendant	Nationwide Property and Casualty Insurance Company Austin, TX 78701-3218	
Plaintiff	Schroder, Elaine The Woodlands, TX 77381-5173	Chad T. Wilson <i>Retained</i> 832-415-1432(W)
Plaintiff	Schroder, Patrick	Chad T. Wilson <i>Retained</i> 832-415-1432(W)

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS			
11/30/2015	Original Petition (OCA)		
11/30/2015	E-Filed Original Petition Document		
11/30/2015	Letters		
11/30/2015	Civil Case Information Sheet		
11/30/2015	Jury Trial Requested		
11/30/2015	Jury Fee Paid		
12/01/2015	Certified Mail Citation		
	Nationwide Property and Casualty Insurance Company	Served	12/04/2015
		Returned	12/17/2015
	Martin, Curtis	Served	12/17/2015
		Returned	12/17/2015
12/11/2015	Answer		

FINANCIAL INFORMATION

	Plaintiff Schroder, Patrick	
	Total Financial Assessment	519.00
	Total Payments and Credits	519.00
	Balance Due as of 12/29/2015	0.00
11/30/2015	Transaction Assessment	519.00
11/30/2015	E-File Electronic Payment Receipt # 2015-62675	Schroder, Patrick (519.00)

EXHIBIT D



CORPORATION SERVICE COMPANY®

null / ALL

Transmittal Number: 14538572

Date Processed: 12/04/2015

Notice of Service of Process

Primary Contact: Service Process Team 3-11-309
Nationwide Mutual Insurance Company
Three Nationwide Plaza
Columbus, OH 43215

Copy of transmittal only provided to: Rebecca Lewis
Kevin Jones
Cassandra Struble

Entity:	Nationwide Property And Casualty Insurance Company Entity ID Number 3286574
Entity Served:	Nationwide Property and Casualty Insurance Company
Title of Action:	Patrick Schroder vs. Nationwide Property and Casualty Insurance Company
Document(s) Type:	Citation/Petition
Nature of Action:	Contract
Court/Agency:	Montgomery County District Court, Texas
Case/Reference No:	15-11-12639
Jurisdiction Served:	Texas
Date Served on CSC:	12/04/2015
Answer or Appearance Due:	10:00 am Monday next following the expiration of 20 days after service
Originally Served On:	CSC
How Served:	Certified Mail
Sender Information:	Chad T. Wilson 832-415-1432

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC

CSC is SAS70 Type II certified for its Litigation Management System.

2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

Montgomery Co. Dist. Clerk's Office
E Dobbs
301 N Main Street

Conroe TX 77301

USPS CERTIFIED MAIL™



9214 8901 4633 9311 2469 30

Nationwide Property and Casualty Insurance
Company
c/o Corporation Service Company
211 E 7th Street, Suite 620

Austin TX 78701-3218

CITATION

Cause Number: 15-11-12639

Clerk of the Court
Barbara Gladden Adamick
P.O Box 2985
Conroe, Texas 77305

Attorney Requesting Service
Chad T. Wilson
1322 Space Park Dr Ste A 155
Houston TX 77058

THE STATE OF TEXAS

NOTICE TO DEFENDANT: You have been sued. You may employ an attorney. If you or your attorney does not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

To: Nationwide Property and Casualty Insurance Company
c/o Corporation Service Company
211 E 7th Street Suite 620
Austin TX 78701-3218

You are hereby commanded to appear by filing a written answer to the Plaintiff's Original Petition, Jury Demand, and Request for Disclosure at or before 10:00 A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable 284th Judicial District Court Montgomery County, Texas at the Courthouse of said County in Conroe, Texas.

Said Plaintiff's Original Petition, Jury Demand, and Request for Disclosure was filed in said court on this the 30th day of November, 2015, numbered 15-11-12639 on the docket of said court, and styled, Patrick Schroder, Elaine Schroder VS. Nationwide Property and Casualty Insurance Company, Curtis Martin

The nature of plaintiff's demand is fully shown by a true and correct copy of Plaintiff's Original Petition, Jury Demand, and Request for Disclosure accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at Conroe, Texas on this the 1st day of December, 2015.

(SEAL)

Barbara Gladden Adamick, District Clerk
Montgomery County, Texas

By: Emily Dobbs

Emily Dobbs, Deputy

OFFICER'S RETURN

Cause No. 15-11-12639

Court No: 284th Judicial District
CourtStyle: Patrick Schroder, Elaine Schroder VS. Nationwide Property and
Casualty Insurance Company, Curtis Martin

To: Nationwide Property and Casualty Insurance Company

Address: c/o Corporation Service Company

211 E 7th Street Suite 620

Austin TX 78701-3218

Came to hand the _____ day of _____, 20____, at _____ o'clock, and
executed in _____ County, Texas by delivering to each of the
within named defendants in person, a true copy of this citation with the
date of delivery endorsed thereon, together with the accompanying copy of
the Plaintiff's Original Petition, Jury Demand, and Request for
Disclosure, at the following times and places, to wit:

Name	Date/Time	Place, Course and distance from Courthouse
_____	_____	_____

Manner of service: _____

*And not executed as to the defendant(s) _____

The diligence used in finding said defendant(s) being: _____

And the cause of failure to execute this process is: _____

And information received as to the whereabouts of said defendant(s) being: _____

FEES:

Serving Petition and Copy \$ _____

TOTAL \$ _____

OFFICER

County, Texas

By: _____, Deputy

AFFIANT

Complete if you are a person other than a Sheriff, Constable, or Clerk of the Court. In
accordance with Rule 107, the officer, or authorized person who services, or attempts to
serve a citation shall sign and return. The return must either be verified or be signed
under penalty of perjury. A return signed under penalty of perjury must contain the
statement below in substantially the following form:

My full name is _____ my date of birth is ____/____/____, and my
address is _____.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT

Executed in _____, County, State of _____, on the ____ day of
_____, 20____.

Declarant/Authorized Process Server

ID# & Exp. Of Certification

~~~~~

DISTRICT COURT

2. Plaintiffs, Patrick and Elaine Schroder, reside in Montgomery County, Texas.
3. Defendant, Nationwide Property and Casualty Insurance Company, is a Texas insurance company, engaged in the business of insurance in the State of Texas. Plaintiffs request service of citation upon Nationwide, through its registered agent for service, **Corporation**

Service Company, 211 E. 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701-3218. Plaintiffs request service at this time.

4. Defendant, Curtis Martin, is an adjuster in the course and working scope of employment with Nationwide. Plaintiffs request service of citation upon Curtis Martin at the address listed with the Texas Department of Insurance: 830 El Dorado Avenue, Huntsville, Alabama 35802-3210. Plaintiffs request service at this time.

#### **JURISDICTION**

5. The Court has jurisdiction over Nationwide because this Defendant engages in the business of insurance in the State of Texas, and the causes of action arise out of Nationwide's business activities in the State of Texas, including those in Montgomery County, Texas, with reference to this specific case.
6. The Court has jurisdiction over Martin because this Defendant engages in the business of adjusting insurance claims in the State of Texas, and the causes of action arise out of his business activities in the State of Texas, including those in Montgomery County, Texas, with reference to this specific case.

#### **VENUE**

7. Venue is proper in Montgomery County, Texas, because the insured property is located in Montgomery County, Texas, and all or a substantial part of the events giving rise to this lawsuit occurred in Montgomery County, Texas. TEX. CIV. PRAC. & REM. CODE § 15.032.

#### **FACTS**

8. Plaintiffs assert claims for fraud, breach of contract, violations of sections 541 and 542 of

the Texas Insurance Code, and violations of the Texas DTPA.

9. Plaintiffs own a Nationwide homeowner's insurance policy, number 7842HO459075 ("the Policy"), which was issued by Nationwide. At all relevant times, Plaintiffs owned the insured premises located at 51 Somerset Pond Place, The Woodlands, Texas 77381-5173 ("the Property").
10. Nationwide or its agent sold the Policy, insuring the Property, to Plaintiffs. Nationwide represented to Plaintiffs that the Policy included hail and windstorm coverage for damage to Plaintiffs' home. Nationwide has refused that coverage which includes, but is not limited to, replacement of the roof in a manner that complies with Montgomery County building codes.
11. On or about April 19, 2015, the Property sustained extensive damage resulting from a severe storm that passed through the Woodlands, Texas, area.
12. In the aftermath of the hail and windstorm, Plaintiffs submitted a claim to Nationwide against the Policy for damage to the Property. Nationwide assigned claim number 7842 459075HO15041901 to Plaintiffs' claim.
13. Plaintiffs asked Nationwide to cover the cost of damage to the Property pursuant to the Policy.
14. Nationwide hired or assigned Martin to inspect and adjust the claim.
15. Martin conducted an initial inspection of the Property on or about June 11, 2015. Martin generated an estimate to repair wind damage to the roof in the amount of \$971.28. Specifically, Martin authorized the repair of one (1) wind damaged square, along with the replacement of six (6) exhaust caps and three (3) roof vents.

16. After application of the Policy deductible, Plaintiffs were left with \$0.00 to complete repairs to the Property.
17. Martin conducted a re-inspection of the Property on or about September 21, 2015. Martin included the same wind damages as in his initial report and added additional damages to the gutter and downspouts. Martin's estimate of damages after his re-inspection totaled \$3,471.08.
18. Again, however, after application of the Policy deductible, Plaintiffs were left with \$0.00 to complete repairs to the Property.
19. Subsequently, Nationwide hired Donan Engineering to inspect the Property for wind and hailstorm damage. Donan acknowledged dents in "metal surfaces such as roof ventilators and gutters" and "in downspouts on the left and right elevation." However, Donan claimed the hail did "not significantly reduce the service life of the impacted shingles" and that the downspouts had "mechanical damage."
20. The Donan report directly contradicts the re-inspection report by Martin that included substantial gutter and downspout damage.
21. To date, Plaintiffs have not received any payment to make repairs to their Property. The replacement cost is currently estimated at \$37,628.45.
22. Nationwide, through its agent, Martin, conducted a substandard and improper inspection of the Property, which grossly undervalued the cost of repairs and yielded an unrealistic amount to underpay coverage.
23. Nationwide has ultimately refused full coverage which includes, but is not limited to, replacement of the roof and additional exterior damage, in a manner that complies with

Montgomery County building codes.

24. As stated above, Nationwide improperly adjusted Plaintiffs' claim. Without limitation, Nationwide misrepresented the cause of, scope of, and cost to repair damages to Plaintiffs' Property, as well as the amount of insurance coverage for Plaintiffs' claim or loss under the Policy.
25. Nationwide made these and other false representations to Plaintiffs, either knowingly or recklessly, as a positive assertion, without knowledge of the truth. Nationwide made these false representations with the intent that Plaintiffs act in accordance with the misrepresentations regarding the grossly deficient damage and repair estimates prepared by Martin.
26. Plaintiffs relied on Nationwide's misrepresentations, including but not limited to those regarding coverage, the cause of, scope of, and cost to repair the damage to Plaintiffs' Property. Plaintiffs' damages are the result of Plaintiffs' reliance on these misrepresentations.
27. Upon receipt of the inspection and estimate reports from Martin, Nationwide failed to assess the claim thoroughly. Based upon Nationwide's grossly unreasonable, intentional, and reckless failure to investigate the claim properly prior to underpaying coverage, Nationwide failed to provide coverage due under the Policy, and Plaintiffs suffered damages.
28. Because Nationwide failed to provide coverage for Plaintiffs' insurance claim, Plaintiffs have been unable to complete any substantive repairs to the Property. This has caused additional damage to Plaintiffs' Property.



29. Furthermore, Nationwide failed to perform its contractual duties to Plaintiffs under the terms of the Policy. Specifically, Nationwide refused to pay full proceeds due under the Policy, although due demand was made for an amount sufficient to cover the damaged Property, and all conditions precedent to recover upon the Policy were carried out by Plaintiffs.
30. Nationwide's misrepresentations, unreasonable delays, and continued denials constitute a breach of the statutory obligations under Chapters 541 and 542 of the Texas Insurance Code. Thus, the breach of the statutory duties constitutes the foundation of a breach of the insurance contract between Defendant Nationwide and Plaintiffs.
31. Nationwide's conduct constitutes a violation of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE §541.060(a) (1). Nationwide has failed to settle Plaintiffs' claim in a fair manner, although Nationwide was aware of its liability to Plaintiffs under the Policy. Specifically, Nationwide has failed to, in an honest and fair manner, balance its own interests in maximizing gains and limiting disbursements, with the interests of Plaintiffs by failing to timely pay Plaintiffs coverage due under the Policy.
32. Nationwide's conduct constitutes a violation of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE §541.060(a) (2) (A). Nationwide failed to provide Plaintiffs a reasonable explanation for partial denial of the claim.
33. Additionally, after Nationwide received statutory demand on or about September 30, 2015, Nationwide has not communicated that any future settlements or payments would be forthcoming to pay for the entire loss covered under the Policy, nor did it provide any explanation for failing to settle Plaintiffs' claim properly.



34. Nationwide's conduct constitutes a violation of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE §541.060(a) (4). Nationwide refused to provide full coverage to Plaintiffs under the Policy due to Defendants' failure to conduct a reasonable investigation.
35. Specifically, Nationwide, through its agents, servants, and representatives, namely Martin, performed an outcome-oriented investigation of Plaintiffs' claim, which resulted in a biased, unfair, and inequitable evaluation of Plaintiffs' losses on the Property.
36. Nationwide's conduct constitutes a violation of the Texas Insurance Code, Prompt Payment of Claims. TEX. INS. CODE §542.055. Nationwide failed to reasonably accept or deny Plaintiffs' full and entire claim within the statutorily mandated time after receiving all necessary information.
37. Nationwide's conduct constitutes a violation of the Texas Insurance Code, Prompt Payment of Claims. TEX. INS. CODE §542.056. Nationwide failed to meet its obligations under the Texas Insurance Code regarding timely payment of the claim. Specifically, Nationwide has delayed full payment of Plaintiffs' claim longer than allowed, and Plaintiffs have not received rightful payment for their claim.
38. Nationwide's wrongful acts and omissions forced Plaintiffs to retain the professional services of the attorneys and law firm representing them with respect to these causes of action.

**CAUSES OF ACTION AGAINST DEFENDANT NATIONWIDE PROPERTY  
AND CASUALTY INSURANCE COMPANY**

**BREACH OF CONTRACT**

39. Nationwide is liable to Plaintiffs for intentional violations of the Texas Insurance Code, and intentional breach of the common law duty of good faith and fair dealing. It follows, then, that the breach of the statutory duties constitutes the foundation of an intentional breach of the insurance contract between Nationwide and Plaintiffs.
40. Nationwide's failure and/or refusal to pay adequate coverage as obligated under the Policy, and under the laws of the State of Texas, constitutes a breach of Nationwide's insurance contract with Plaintiffs.

**NONCOMPLIANCE WITH THE TEXAS INSURANCE CODE:  
UNFAIR SETTLEMENT PRACTICES**

41. Nationwide's conduct constitutes multiple violations of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE §541.060(a). All violations under this article are actionable by TEX. INS. CODE §541.151.
42. Nationwide's unfair settlement practice of misrepresenting to Plaintiffs material facts relating to coverage constitutes an unfair method of competition and a deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(a) (1).
43. Nationwide's unfair settlement practice of failing to attempt in good faith to make a prompt, fair, and equitable settlement of the claim, even though Nationwide's liability under the Policy was reasonably clear, constitutes an unfair method of competition and a deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(a) (2) (A).

44. Nationwide's unfair settlement practice of failing to provide Plaintiffs a prompt and reasonable explanation of the basis in the Policy, in relation to the facts or applicable law, for partial denial of the claim, constitutes an unfair method of competition and a deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(a) (3).
45. Nationwide's unfair settlement practice of refusing to pay Plaintiffs' full claim without conducting a reasonable investigation constitutes an unfair method of competition and a deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(a) (7).

**NONCOMPLIANCE WITH THE TEXAS INSURANCE CODE:  
THE PROMPT PAYMENT OF CLAIMS**

46. Nationwide's conduct constitutes multiple violations of the Texas Insurance Code, Prompt Payment of Claims. All violations made under this article are actionable under TEX. INS. CODE §542.060.
47. Nationwide's delay in paying Plaintiffs' claim following receipt of all items, statements, and forms reasonably requested and required, for longer than the amount of time provided, constitutes a non-prompt payment of the claim. TEX. INS. CODE §542.058.

**BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**

48. Nationwide's conduct constitutes a breach of the common law duty of good faith and fair dealing owed to an insured in insurance contracts.
49. Nationwide's failure to adequately and reasonably investigate and evaluate Plaintiffs' claim, even though Nationwide knew or should have known by the exercise of reasonable diligence that liability was reasonably clear, constitutes a breach of the duty of good faith and fair dealing.

### **DTPA VIOLATIONS**

50. Nationwide's conduct constitutes multiple violations of the Texas Deceptive Trade Practices Act ("DTPA"), TEX. BUS. & COM. CODE 17.41-63. Plaintiffs are consumers of goods and services provided by Nationwide pursuant to the DTPA. Plaintiffs have met all conditions precedent to bringing this cause of action against Nationwide. Specifically, Nationwide's violations of the DTPA include, without limitation, the following matters:

- A. By its acts, omissions, failures, and conduct, Nationwide has violated sections 17.46(b)(2), (5), (7), (9), (12), (20) and (24) of the DTPA. Nationwide's violations include, (1) unreasonable delays in the investigation, adjustment, and resolution of Plaintiffs' claim, (2) failure to give Plaintiffs the benefit of the doubt, and (3) failure to pay for the proper repair of Plaintiffs' Property when liability has become reasonably clear, which gives Plaintiffs the right to recover under section 17.46(b)(2).
- B. Nationwide represented to Plaintiffs that the Policy and Nationwide's adjusting agent and investigative services had characteristics or benefits they did not possess, which gives Plaintiffs the right to recover under section 17.46(b)(5) of the DTPA.
- C. Nationwide represented to Plaintiffs that Nationwide's Policy and adjusting services were of a particular standard, quality, or grade when they were of another, in violation of section 17.46(b)(7) of the DTPA.
- D. Nationwide advertised the Policy and adjusting services with the intent not to sell them as advertised, in violation of section 17.46(b)(9) of the DTPA.

- E. Nationwide breached an express warranty that the damages caused by wind and hail would be covered under the Policy. This breach entitles Plaintiffs to recover under sections 17.46(b) (12) and (20) and 17.50(a) (2) of the DTPA.
  - F. Nationwide's actions are unconscionable in that Nationwide took advantage of Plaintiffs' lack of knowledge, ability, and experience to a grossly unfair degree. Nationwide's unconscionable conduct gives Plaintiffs a right to relief under section 17.50(a) (3) of the DTPA; and
  - G. Nationwide's conduct, acts, omissions, and failures, as described in this petition, are unfair practices in the business of insurance in violation of section 17.50(a)(4) of the DTPA.
51. Each of the above-described acts, omissions, and failures of Nationwide is a producing cause of Plaintiffs' damages. All of Nationwide's acts, omissions, and failures were committed "knowingly" and "intentionally," as defined by the Texas Deceptive Trade Practices Act.

#### **FRAUD**

52. Nationwide is liable to Plaintiffs for common law fraud.
53. Every misrepresentation described above concerned material facts that absent such representations, Plaintiffs would not have acted as they did, and Nationwide knew the representations were false or made recklessly without any knowledge of their truth as a positive assertion.

54. Nationwide made these statements intending that Plaintiffs act upon them. Plaintiffs then acted in reliance upon these statements, thereby causing Plaintiffs to suffer injury constituting common law fraud.

**CAUSES OF ACTION AGAINST DEFENDANT CURTIS MARTIN**

**NONCOMPLIANCE WITH THE TEXAS INSURANCE CODE:  
UNFAIR SETTLEMENT PRACTICES**

55. Martin's conduct constitutes multiple violations of the Texas Insurance Code, Unfair Claim Settlement Practices Act. TEX. INS. CODE §541.060(a).
56. Martin is individually liable for his unfair and deceptive acts, irrespective of the fact that he was acting on behalf of Nationwide, because Martin is a "person," as defined by TEX. INS. CODE §541.002(2).
57. Martin's unfair settlement practice of failing to attempt in good faith to make a prompt, fair, and equitable settlement of the claim, even though liability under the Policy was reasonably clear, constitutes an unfair method of competition and a deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(a) (2) (A).
58. Martin's unfair settlement practice of failing to provide Plaintiffs a prompt and reasonable explanation of the basis in the Policy, in relation to the facts or applicable law, for partial denial of the claim, also constitutes an unfair method of competition and an unfair and deceptive act or practice. TEX. INS. CODE §541.060(a) (3).
59. Martin knowingly underestimated the amount of damage to the Property. As such, Martin failed to adopt and implement reasonable standards for the investigation of the claim arising under the Policy. TEX. INS. CODE §542.003(3).

60. Furthermore, Martin did not attempt in good faith to effect a fair, prompt, and equitable settlement of the claim. TEX. INS. CODE §542.003(4).

#### **DTPA VIOLATIONS**

61. Martin's conduct constitutes multiple violations of the Texas Deceptive Trade Practices Act ("DTPA"), TEX. BUS. & COM. CODE 17.41–63. Plaintiffs are consumers of goods and services provided by Martin pursuant to the DTPA. Plaintiffs have met all conditions precedent to bringing this cause of action against Martin. Specifically, Martin's violations of the DTPA include the following matters:

- A. By his acts, omissions, failures, and conduct, Martin has violated sections 17.46(b)(2), (5), and (7) of the DTPA. Martin's violations include, (1) failure to give Plaintiffs the benefit of the doubt, and (2) failure to write up an estimate reflecting the proper repair of Plaintiffs' Property when liability has become reasonably clear, which gives Plaintiffs the right to recover under section 17.46(b)(2).
- B. Martin represented to Plaintiffs that the Policy and his adjusting and investigative services had characteristics or benefits they did not possess, which gives Plaintiffs the right to recover under section 17.46(b)(5) of the DTPA.
- C. Martin represented to Plaintiffs that the Policy and his adjusting services were of a particular standard, quality, or grade when they were of another, in violation of section 17.46(b)(7) of the DTPA.
- D. Martin's actions are unconscionable in that Martin took advantage of Plaintiffs' lack of knowledge, ability, and experience to a grossly unfair degree. Martin's

unconscionable conduct gives Plaintiffs a right to relief under section 17.50(a)(3) of the DTPA; and

E. Martin's conduct, acts, omissions, and failures, as described in this petition, are unfair practices in the business of insurance in violation of section 17.50(a)(4) of the DTPA.

62. Each of Martin's above-described acts, omissions, and failures is a producing cause of Plaintiffs' damages. All acts, omissions, and failures were committed "knowingly" and "intentionally" by Martin, as defined by the Texas Deceptive Trade Practices Act. TEX. BUS. & COM. CODE 17.45.

#### **KNOWLEDGE**

63. Defendants made each of the acts described above, together and singularly, "knowingly," as defined in the Texas Insurance Code, and each was a producing cause of Plaintiffs' damages described herein.

#### **WAIVER AND ESTOPPEL**

64. Defendants waived and are estopped from asserting any coverage defenses, conditions, exclusions, or exceptions to coverage not contained in any reservation of rights letter to Plaintiffs.

#### **DAMAGES**

65. The damages caused to the Property have not been properly addressed or repaired since the claim was made, causing further damage to the Property, and undue hardship and burden to Plaintiffs. These damages are a direct result of Defendants' mishandling of Plaintiffs' claims in violation of the laws set forth above.



66. Plaintiffs currently estimate that actual damages to the Property under the Policy are \$37,628.45.
67. Plaintiffs would show that all of the aforementioned acts, taken together or singularly, constitute the producing causes of the damages sustained. The above described acts, omissions, failures, and conduct of Defendants have caused Plaintiffs' damages, which include, without limitation, the cost to properly repair Plaintiffs' Property and any investigative and engineering fees incurred.
68. For breach of contract, Plaintiffs are entitled to regain the benefit of their bargain, which is the amount of their claim, consequential damages, together with attorney's fees.
69. For noncompliance with the DTPA and Texas Insurance Code, Unfair Settlement Practices, Plaintiffs are entitled to actual damages, which include the loss of benefits owed pursuant to the Policy, mental anguish, court costs, and attorney's fees. For knowing and intentional conduct of the acts described above, Plaintiffs ask for three (3) times their actual damages. TEX. INS. CODE §541.152 and TEX. BUS. & COM. CODE 17.50(b) (1).
70. For noncompliance with Texas Insurance Code, Prompt Payment of Claims, Plaintiffs are entitled to the amount of their claim, plus an eighteen percent (18%) per annum penalty on that claim, as damages, as well as pre-judgment interest and reasonable attorney's fees. TEX. INS. CODE §542.060.
71. For breach of the common law duty of good faith and fair dealing, Plaintiffs are entitled to compensatory damages, including all forms of loss resulting from Defendants' breach of duty, such as additional costs, economic hardship, losses due to the nonpayment of the amount Nationwide owed, exemplary damages, and damages for emotional distress.

72. Defendants' breach of the common law duty of good faith and fair dealing was committed intentionally, with a conscious indifference to Plaintiffs' rights and welfare, and with "malice," as that term is defined in Chapter 41 of the Texas Civil Practices and Remedies Code. These violations are the type of conduct which the State of Texas protects its citizens against by the imposition of exemplary damages. Therefore, Plaintiffs seek the recovery of exemplary damages in an amount determined by the finder of fact sufficient to punish Defendants for their wrongful conduct, and to set an example to deter Defendants and others from committing similar acts in the future.
73. For fraud, Plaintiffs are entitled to recover actual and exemplary damages for knowingly fraudulent and malicious representations, along with attorney's fees, interest, and court costs.
74. For the prosecution and collection of this claim, Plaintiffs have been compelled to engage the services of the attorneys subscribed to this pleading. Therefore, under Chapter 38 of the Texas Civil Practices and Remedies Code, sections 541 and 542 of the Texas Insurance Code, and section 17.50 of the DTPA, Plaintiffs are entitled to recover a sum for the reasonable and necessary services of Plaintiffs' attorneys in the preparation and trial of this action, including any appeals to the Court of Appeals and/or the Supreme Court of Texas.
75. As required by Rule 47(b) of the Texas Rules of Civil Procedure, Plaintiffs' counsel states that the damages sought are in an amount within the jurisdictional limits of this Court. As required by Rule 47(c)(3) of the Texas Rules of Civil Procedure, Plaintiffs' counsel states that Plaintiffs seek only monetary relief of no less than \$100,000.00, but no more than \$200,000.00, including damages of any kind, penalties, costs, expenses, pre-judgment

interest, and attorney fees. A jury will ultimately determine the monetary relief actually awarded, however. Plaintiffs also seek pre-judgment and post-judgment interest at the highest legal rate.

#### **REQUESTS FOR DISCLOSURE**

76. Under Texas Rules of Civil Procedure 190 and 194, Plaintiffs request that Defendants disclose, within fifty (50) days from the date this request is served, the information or material described in Rules 190.2(b)(6) and 194.2.

#### **JURY DEMAND**

77. Plaintiffs hereby request a jury trial for all causes of action alleged herein, tried before a jury consisting of citizens residing in Montgomery County, Texas. Plaintiffs hereby tender the appropriate jury fee.

#### **PRAYER**

Plaintiffs pray that Defendants, Nationwide Property and Casualty Insurance Company and Curtis Martin, be cited and served to appear, and that upon trial hereof, Plaintiffs, Patrick and Elaine Schroder, recover from Defendants, Nationwide Property and Casualty Insurance Company and Curtis Martin, such sums as would reasonably and justly compensate Plaintiffs in accordance with the rules of law and procedure, as to actual, consequential, and treble damages under the Texas Insurance Code and Texas Deceptive Trade Practices Act, and all punitive, additional, and exemplary damages as may be found. In addition, Plaintiffs request the award of attorney's fees for the trial and any appeal of this case, for all costs of Court expended on Plaintiffs' behalf, for pre-judgment and post-judgment interest as allowed by law, and for any other relief, at law or in equity, to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

CHAD T WILSON LAW FIRM PLLC

By: /s/ Chad T. Wilson

Chad T. Wilson

Bar No. 24079587

CWilson@cwilsonlaw.com

Kimberly N. Blum

Bar No. 24092148

Kblum@cwilsonlaw.com

1322 Space Park Drive, Suite A155

Houston, Texas 77058

Telephone: (832) 415-1432

Facsimile: (281) 940-2137

ATTORNEYS FOR PLAINTIFFS

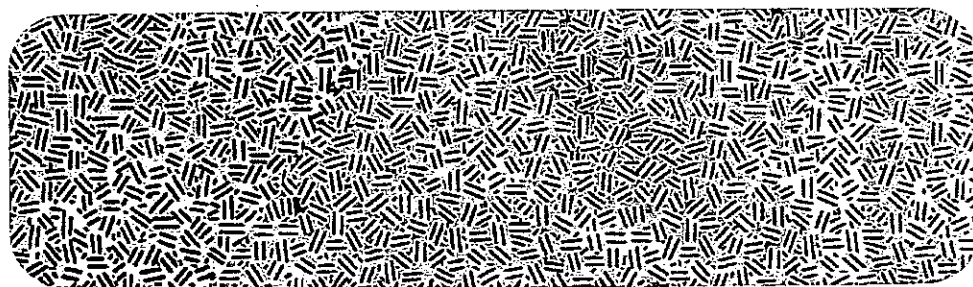
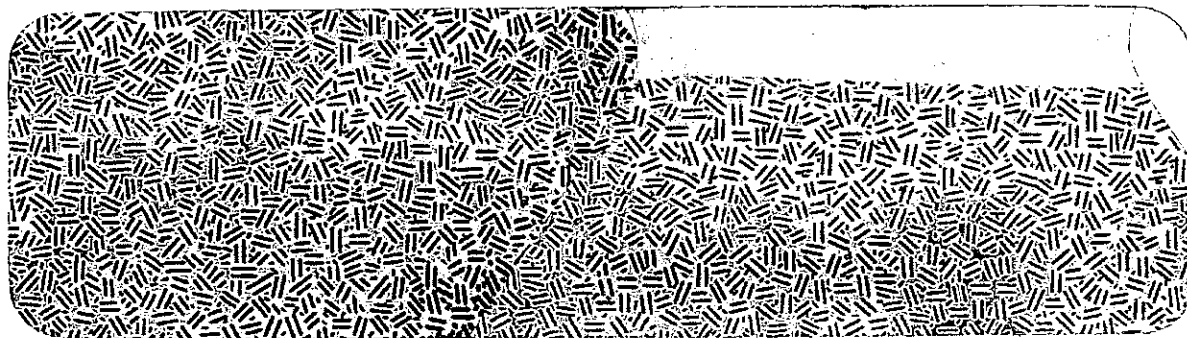
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[Skip to Main Content](#) [Logout My Account](#) [Search Menu](#) [New Civil Search](#) [Refine Search](#) [Back](#)
Location : All Courts [Help](#)**REGISTER OF ACTIONS**

CASE NO. 15-11-12639

Patrick Schroder, Elaine Schroder VS. Nationwide Property and Casualty  
Insurance Company, Curtis Martin

§  
§  
§  
§

Contract  
Case Type: Consumer/Comm/Debt  
>\$100,000 but <\$200,000  
Date Filed: 11/30/2015  
Location: 284th Judicial District Court

**PARTY INFORMATION**

|                  |                                                                                    |                                                                                    |
|------------------|------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|
| <b>Defendant</b> | <b>Martin, Curtis</b><br>Huntsville, AL 35802-3210                                 | <b>Attorneys</b><br><b>RANDALL G WALTERS</b><br><i>Retained</i><br>214-741-4805(W) |
| <b>Defendant</b> | <b>Nationwide Property and Casualty Insurance Company</b><br>Austin, TX 78701-3218 |                                                                                    |
| <b>Plaintiff</b> | <b>Schroder, Elaine</b><br>The Woodlands, TX 77381-5173                            | <b>Chad T. Wilson</b><br><i>Retained</i><br>832-415-1432(W)                        |
| <b>Plaintiff</b> | <b>Schroder, Patrick</b>                                                           | <b>Chad T. Wilson</b><br><i>Retained</i><br>832-415-1432(W)                        |

**EVENTS & ORDERS OF THE COURT**

|                                  |                                                    |                     |
|----------------------------------|----------------------------------------------------|---------------------|
| <b>OTHER EVENTS AND HEARINGS</b> |                                                    |                     |
| 11/30/2015                       | Original Petition (OCA)                            |                     |
| 11/30/2015                       | E-Filed Original Petition Document                 |                     |
| 11/30/2015                       | Letters                                            |                     |
| 11/30/2015                       | Civil Case Information Sheet                       |                     |
| 11/30/2015                       | Jury Trial Requested                               |                     |
| 11/30/2015                       | Jury Fee Paid                                      |                     |
| 12/01/2015                       | Certified Mail Citation                            |                     |
|                                  | Nationwide Property and Casualty Insurance Company | Served 12/04/2015   |
|                                  |                                                    | Returned 12/17/2015 |
|                                  | Martin, Curtis                                     | Served 12/17/2015   |
|                                  |                                                    | Returned 12/17/2015 |
| 12/11/2015                       | Answer                                             |                     |

**FINANCIAL INFORMATION**

|            |                                                |                            |
|------------|------------------------------------------------|----------------------------|
|            | <b>Plaintiff Schroder, Patrick</b>             |                            |
|            | Total Financial Assessment                     | 519.00                     |
|            | Total Payments and Credits                     | 519.00                     |
|            | <b>Balance Due as of 12/29/2015</b>            | <b>0.00</b>                |
| 11/30/2015 | Transaction Assessment                         | 519.00                     |
| 11/30/2015 | E-File Electronic Payment Receipt # 2015-62675 | Schroder, Patrick (519.00) |

## EXHIBIT E



CORPORATION SERVICE COMPANY

## Notice of Service of Process

Transmittal Number: 14538572  
Date Processed: 12/04/2015

**Primary Contact:** Service Process Team 3-11-309  
Nationwide Mutual Insurance Company  
Three Nationwide Plaza  
Columbus, OH 43215

**Copy of transmittal only provided to:** Rebecca Lewis  
Kevin Jones  
Cassandra Struble

---

|                                  |                                                                                |
|----------------------------------|--------------------------------------------------------------------------------|
| <b>Entity:</b>                   | Nationwide Property And Casualty Insurance Company<br>Entity ID Number 3286574 |
| <b>Entity Served:</b>            | Nationwide Property and Casualty Insurance Company                             |
| <b>Title of Action:</b>          | Patrick Schroder vs. Nationwide Property and Casualty Insurance Company        |
| <b>Document(s) Type:</b>         | Citation/Petition                                                              |
| <b>Nature of Action:</b>         | Contract                                                                       |
| <b>Court/Agency:</b>             | Montgomery County District Court, Texas                                        |
| <b>Case/Reference No:</b>        | 15-11-12639                                                                    |
| <b>Jurisdiction Served:</b>      | Texas                                                                          |
| <b>Date Served on CSC:</b>       | 12/04/2015                                                                     |
| <b>Answer or Appearance Due:</b> | 10:00 am Monday next following the expiration of 20 days after service         |
| <b>Originally Served On:</b>     | CSC                                                                            |
| <b>How Served:</b>               | Certified Mail                                                                 |
| <b>Sender Information:</b>       | Chad T. Wilson<br>832-415-1432                                                 |

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Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

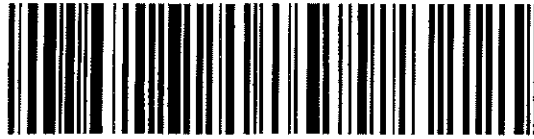
**To avoid potential delay, please do not send your response to CSC**  
*CSC is SAS70 Type II certified for its Litigation Management System.*  
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | [sop@cscinfo.com](mailto:sop@cscinfo.com)



Montgomery Co. Dist. Clerk's Office  
E Dobbs  
301 N Main Street

Conroe TX 77301

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9214 8901 4633 9311 2469 30

Nationwide Property and Casualty Insurance  
Company  
c/o Corporation Service Company  
211 E 7th Street, Suite 620

Austin TX 78701-3218

## CITATION

Cause Number: 15-11-12639

Clerk of the Court  
Barbara Gladden Adamick  
P.O. Box 2985  
Conroe, Texas 77305

Attorney Requesting Service  
Chad T. Wilson  
1322 Space Park Dr Ste A 155  
Houston TX 77058

### THE STATE OF TEXAS

NOTICE TO DEFENDANT: You have been sued. You may employ an attorney. If you or your attorney does not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

To: Nationwide Property and Casualty Insurance Company  
c/o Corporation Service Company  
211 E 7th Street Suite 620  
Austin TX 78701-3218

You are hereby commanded to appear by filing a written answer to the Plaintiff's Original Petition, Jury Demand, and Request for Disclosure at or before 10:00 A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable 284th Judicial District Court Montgomery County, Texas at the Courthouse of said County in Conroe, Texas.

Said Plaintiff's Original Petition, Jury Demand, and Request for Disclosure was filed in said court on this the 30th day of November, 2015, numbered 15-11-12639 on the docket of said court, and styled, Patrick Schroder, Elaine Schroder VS. Nationwide Property and Casualty Insurance Company, Curtis Martin

The nature of plaintiff's demand is fully shown by a true and correct copy of Plaintiff's Original Petition, Jury Demand, and Request for Disclosure accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at Conroe, Texas on this the 1st day of December, 2015.

(SEAL)

Barbara Gladden Adamick, District Clerk  
Montgomery County, Texas

By:

*Emily Dobbs*

Emily Dobbs, Deputy

## OFFICER'S RETURN

Cause No. 15-11-12639

Court No: 284th Judicial District  
CourtStyle: Patrick Schroder, Elaine Schroder VS. Nationwide Property and  
Casualty Insurance Company, Curtis Martin

To: Nationwide Property and Casualty Insurance Company

Address: c/o Corporation Service Company

211 E 7th Street Suite 620

Austin TX 78701-3218

Came to hand the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock, and  
executed in \_\_\_\_\_ County, Texas by delivering to each of the  
within named defendants in person, a true copy of this citation with the  
date of delivery endorsed thereon, together with the accompanying copy of  
the Plaintiff's Original Petition, Jury Demand, and Request for  
Disclosure, at the following times and places, to wit:

| Name  | Date/Time | Place, Course and distance from Courthouse |
|-------|-----------|--------------------------------------------|
| _____ | _____     | _____                                      |

Manner of service: \_\_\_\_\_

\*And not executed as to the defendant(s) \_\_\_\_\_

The diligence used in finding said defendant(s) being: \_\_\_\_\_

And the cause of failure to execute this process is: \_\_\_\_\_

And information received as to the whereabouts of said defendant(s) being: \_\_\_\_\_

## FEES:

Serving Petition and Copy \$ \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

OFFICER

\_\_\_\_\_  
County, Texas

By: \_\_\_\_\_, Deputy

## AFFIANT

Complete if you are a person other than a Sheriff, Constable, or Clerk of the Court. In  
accordance with Rule 107, the officer, or authorized person who services, or attempts to  
serve a citation shall sign and return. The return must either be verified or be signed  
under penalty of perjury. A return signed under penalty of perjury must contain the  
statement below in substantially the following form:

My full name is \_\_\_\_\_ my date of birth is \_\_\_\_/\_\_\_\_/\_\_\_\_, and my  
address is \_\_\_\_\_.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT

Executed in \_\_\_\_\_, County, State of \_\_\_\_\_, on the \_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_.

Declarant/Authorized Process Server

ID# &amp; Exp. Of Certification

Received and Filed for Record  
11/30/2015 12:29:32 PM  
Barbara Gladden Adamick  
District Clerk  
Montgomery County, Texas

CAUSE NO. 15-11-12639

PATRICK AND ELAINE  
SCHRODER,

Plaintiffs,

V.

NATIONWIDE PROPERTY AND  
CASUALTY INSURANCE  
COMPANY AND CURTIS MARTIN,

Defendants.

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IN THE JUDICIAL COURT OF

MONTGOMERY COUNTY, TEXAS

Montgomery County - 284th Judicial District Court

\_\_\_\_ DISTRICT COURT

---

**PLAINTIFFS' ORIGINAL PETITION, JURY DEMAND,  
AND REQUEST FOR DISCLOSURE**

---

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Patrick and Elaine Schroder ("Plaintiffs"), and file **Plaintiffs' Original Petition, Jury Demand, and Request for Disclosure**, complaining of Nationwide Property and Casualty Insurance Company ("Nationwide") and Curtis Martin ("Martin") (or collectively "Defendants") and for cause of action, Plaintiffs respectfully show the following:

**DISCOVERY CONTROL PLAN**

1. Plaintiffs intend to conduct discovery under Level 3, Texas Rules of Civil Procedure 190.4 and 169.

**PARTIES**

2. Plaintiffs, Patrick and Elaine Schroder, reside in Montgomery County, Texas.
3. Defendant, Nationwide Property and Casualty Insurance Company, is a Texas insurance company, engaged in the business of insurance in the State of Texas. Plaintiffs request service of citation upon Nationwide, through its registered agent for service, Corporation

Service Company, 211 E. 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701-3218. Plaintiffs request service at this time.

4. Defendant, Curtis Martin, is an adjuster in the course and working scope of employment with Nationwide. Plaintiffs request service of citation upon Curtis Martin at the address listed with the Texas Department of Insurance: 830 El Dorado Avenue, Huntsville, Alabama 35802-3210. Plaintiffs request service at this time.

#### **JURISDICTION**

5. The Court has jurisdiction over Nationwide because this Defendant engages in the business of insurance in the State of Texas, and the causes of action arise out of Nationwide's business activities in the State of Texas, including those in Montgomery County, Texas, with reference to this specific case.
6. The Court has jurisdiction over Martin because this Defendant engages in the business of adjusting insurance claims in the State of Texas, and the causes of action arise out of his business activities in the State of Texas, including those in Montgomery County, Texas, with reference to this specific case.

#### **VENUE**

7. Venue is proper in Montgomery County, Texas, because the insured property is located in Montgomery County, Texas, and all or a substantial part of the events giving rise to this lawsuit occurred in Montgomery County, Texas. TEX. CIV. PRAC. & REM. CODE § 15.032.

#### **FACTS**

8. Plaintiffs assert claims for fraud, breach of contract, violations of sections 541 and 542 of

the Texas Insurance Code, and violations of the Texas DTPA.

9. Plaintiffs own a Nationwide homeowner's insurance policy, number 7842HO459075 ("the Policy"), which was issued by Nationwide. At all relevant times, Plaintiffs owned the insured premises located at 51 Somerset Pond Place, The Woodlands, Texas 77381-5173 ("the Property").
10. Nationwide or its agent sold the Policy, insuring the Property, to Plaintiffs. Nationwide represented to Plaintiffs that the Policy included hail and windstorm coverage for damage to Plaintiffs' home. Nationwide has refused that coverage which includes, but is not limited to, replacement of the roof in a manner that complies with Montgomery County building codes.
11. On or about April 19, 2015, the Property sustained extensive damage resulting from a severe storm that passed through the Woodlands, Texas, area.
12. In the aftermath of the hail and windstorm, Plaintiffs submitted a claim to Nationwide against the Policy for damage to the Property. Nationwide assigned claim number 7842 459075HO15041901 to Plaintiffs' claim.
13. Plaintiffs asked Nationwide to cover the cost of damage to the Property pursuant to the Policy.
14. Nationwide hired or assigned Martin to inspect and adjust the claim.
15. Martin conducted an initial inspection of the Property on or about June 11, 2015. Martin generated an estimate to repair wind damage to the roof in the amount of \$971.28. Specifically, Martin authorized the repair of one (1) wind damaged square, along with the replacement of six (6) exhaust caps and three (3) roof vents.

16. After application of the Policy deductible, Plaintiffs were left with \$0.00 to complete repairs to the Property.
17. Martin conducted a re-inspection of the Property on or about September 21, 2015. Martin included the same wind damages as in his initial report and added additional damages to the gutter and downspouts. Martin's estimate of damages after his re-inspection totaled \$3,471.08.
18. Again, however, after application of the Policy deductible, Plaintiffs were left with \$0.00 to complete repairs to the Property.
19. Subsequently, Nationwide hired Donan Engineering to inspect the Property for wind and hailstorm damage. Donan acknowledged dents in "metal surfaces such as roof ventilators and gutters" and "in downspouts on the left and right elevation." However, Donan claimed the hail did "not significantly reduce the service life of the impacted shingles" and that the downspouts had "mechanical damage."
20. The Donan report directly contradicts the re-inspection report by Martin that included substantial gutter and downspout damage.
21. To date, Plaintiffs have not received any payment to make repairs to their Property. The replacement cost is currently estimated at \$37,628.45.
22. Nationwide, through its agent, Martin, conducted a substandard and improper inspection of the Property, which grossly undervalued the cost of repairs and yielded an unrealistic amount to underpay coverage.
23. Nationwide has ultimately refused full coverage which includes, but is not limited to, replacement of the roof and additional exterior damage, in a manner that complies with



Montgomery County building codes.

24. As stated above, Nationwide improperly adjusted Plaintiffs' claim. Without limitation, Nationwide misrepresented the cause of, scope of, and cost to repair damages to Plaintiffs' Property, as well as the amount of insurance coverage for Plaintiffs' claim or loss under the Policy.
25. Nationwide made these and other false representations to Plaintiffs, either knowingly or recklessly, as a positive assertion, without knowledge of the truth. Nationwide made these false representations with the intent that Plaintiffs act in accordance with the misrepresentations regarding the grossly deficient damage and repair estimates prepared by Martin.
26. Plaintiffs relied on Nationwide's misrepresentations, including but not limited to those regarding coverage, the cause of, scope of, and cost to repair the damage to Plaintiffs' Property. Plaintiffs' damages are the result of Plaintiffs' reliance on these misrepresentations.
27. Upon receipt of the inspection and estimate reports from Martin, Nationwide failed to assess the claim thoroughly. Based upon Nationwide's grossly unreasonable, intentional, and reckless failure to investigate the claim properly prior to underpaying coverage, Nationwide failed to provide coverage due under the Policy, and Plaintiffs suffered damages.
28. Because Nationwide failed to provide coverage for Plaintiffs' insurance claim, Plaintiffs have been unable to complete any substantive repairs to the Property. This has caused additional damage to Plaintiffs' Property.



29. Furthermore, Nationwide failed to perform its contractual duties to Plaintiffs under the terms of the Policy. Specifically, Nationwide refused to pay full proceeds due under the Policy, although due demand was made for an amount sufficient to cover the damaged Property, and all conditions precedent to recover upon the Policy were carried out by Plaintiffs.
30. Nationwide's misrepresentations, unreasonable delays, and continued denials constitute a breach of the statutory obligations under Chapters 541 and 542 of the Texas Insurance Code. Thus, the breach of the statutory duties constitutes the foundation of a breach of the insurance contract between Defendant Nationwide and Plaintiffs.
31. Nationwide's conduct constitutes a violation of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE §541.060(a) (1). Nationwide has failed to settle Plaintiffs' claim in a fair manner, although Nationwide was aware of its liability to Plaintiffs under the Policy. Specifically, Nationwide has failed to, in an honest and fair manner, balance its own interests in maximizing gains and limiting disbursements, with the interests of Plaintiffs by failing to timely pay Plaintiffs coverage due under the Policy.
32. Nationwide's conduct constitutes a violation of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE §541.060(a) (2) (A). Nationwide failed to provide Plaintiffs a reasonable explanation for partial denial of the claim.
33. Additionally, after Nationwide received statutory demand on or about September 30, 2015, Nationwide has not communicated that any future settlements or payments would be forthcoming to pay for the entire loss covered under the Policy, nor did it provide any explanation for failing to settle Plaintiffs' claim properly.

34. Nationwide's conduct constitutes a violation of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE §541.060(a) (4). Nationwide refused to provide full coverage to Plaintiffs under the Policy due to Defendants' failure to conduct a reasonable investigation.
35. Specifically, Nationwide, through its agents, servants, and representatives, namely Martin, performed an outcome-oriented investigation of Plaintiffs' claim, which resulted in a biased, unfair, and inequitable evaluation of Plaintiffs' losses on the Property.
36. Nationwide's conduct constitutes a violation of the Texas Insurance Code, Prompt Payment of Claims. TEX. INS. CODE §542.055. Nationwide failed to reasonably accept or deny Plaintiffs' full and entire claim within the statutorily mandated time after receiving all necessary information.
37. Nationwide's conduct constitutes a violation of the Texas Insurance Code, Prompt Payment of Claims. TEX. INS. CODE §542.056. Nationwide failed to meet its obligations under the Texas Insurance Code regarding timely payment of the claim. Specifically, Nationwide has delayed full payment of Plaintiffs' claim longer than allowed, and Plaintiffs have not received rightful payment for their claim.
38. Nationwide's wrongful acts and omissions forced Plaintiffs to retain the professional services of the attorneys and law firm representing them with respect to these causes of action.

**CAUSES OF ACTION AGAINST DEFENDANT NATIONWIDE PROPERTY  
AND CASUALTY INSURANCE COMPANY**

**BREACH OF CONTRACT**

39. Nationwide is liable to Plaintiffs for intentional violations of the Texas Insurance Code, and intentional breach of the common law duty of good faith and fair dealing. It follows, then, that the breach of the statutory duties constitutes the foundation of an intentional breach of the insurance contract between Nationwide and Plaintiffs.
40. Nationwide's failure and/or refusal to pay adequate coverage as obligated under the Policy, and under the laws of the State of Texas, constitutes a breach of Nationwide's insurance contract with Plaintiffs.

**NONCOMPLIANCE WITH THE TEXAS INSURANCE CODE:  
UNFAIR SETTLEMENT PRACTICES**

41. Nationwide's conduct constitutes multiple violations of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE §541.060(a). All violations under this article are actionable by TEX. INS. CODE §541.151.
42. Nationwide's unfair settlement practice of misrepresenting to Plaintiffs material facts relating to coverage constitutes an unfair method of competition and a deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(a) (1).
43. Nationwide's unfair settlement practice of failing to attempt in good faith to make a prompt, fair, and equitable settlement of the claim, even though Nationwide's liability under the Policy was reasonably clear, constitutes an unfair method of competition and a deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(a) (2) (A).

44. Nationwide's unfair settlement practice of failing to provide Plaintiffs a prompt and reasonable explanation of the basis in the Policy, in relation to the facts or applicable law, for partial denial of the claim, constitutes an unfair method of competition and a deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(a) (3).
45. Nationwide's unfair settlement practice of refusing to pay Plaintiffs' full claim without conducting a reasonable investigation constitutes an unfair method of competition and a deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(a) (7).

**NONCOMPLIANCE WITH THE TEXAS INSURANCE CODE:  
THE PROMPT PAYMENT OF CLAIMS**

46. Nationwide's conduct constitutes multiple violations of the Texas Insurance Code, Prompt Payment of Claims. All violations made under this article are actionable under TEX. INS. CODE §542.060.
47. Nationwide's delay in paying Plaintiffs' claim following receipt of all items, statements, and forms reasonably requested and required, for longer than the amount of time provided, constitutes a non-prompt payment of the claim. TEX. INS. CODE §542.058.

**BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**

48. Nationwide's conduct constitutes a breach of the common law duty of good faith and fair dealing owed to an insured in insurance contracts.
49. Nationwide's failure to adequately and reasonably investigate and evaluate Plaintiffs' claim, even though Nationwide knew or should have known by the exercise of reasonable diligence that liability was reasonably clear, constitutes a breach of the duty of good faith and fair dealing.

### **DTPA VIOLATIONS**

50. Nationwide's conduct constitutes multiple violations of the Texas Deceptive Trade Practices Act ("DTPA"), TEX. BUS. & COM. CODE 17.41–63. Plaintiffs are consumers of goods and services provided by Nationwide pursuant to the DTPA. Plaintiffs have met all conditions precedent to bringing this cause of action against Nationwide. Specifically, Nationwide's violations of the DTPA include, without limitation, the following matters:

- A. By its acts, omissions, failures, and conduct, Nationwide has violated sections 17.46(b)(2), (5), (7), (9), (12), (20) and (24) of the DTPA. Nationwide's violations include, (1) unreasonable delays in the investigation, adjustment, and resolution of Plaintiffs' claim, (2) failure to give Plaintiffs the benefit of the doubt, and (3) failure to pay for the proper repair of Plaintiffs' Property when liability has become reasonably clear, which gives Plaintiffs the right to recover under section 17.46(b)(2).
- B. Nationwide represented to Plaintiffs that the Policy and Nationwide's adjusting agent and investigative services had characteristics or benefits they did not possess, which gives Plaintiffs the right to recover under section 17.46(b)(5) of the DTPA.
- C. Nationwide represented to Plaintiffs that Nationwide's Policy and adjusting services were of a particular standard, quality, or grade when they were of another, in violation of section 17.46(b)(7) of the DTPA.
- D. Nationwide advertised the Policy and adjusting services with the intent not to sell them as advertised, in violation of section 17.46(b)(9) of the DTPA.

- E. Nationwide breached an express warranty that the damages caused by wind and hail would be covered under the Policy. This breach entitles Plaintiffs to recover under sections 17.46(b) (12) and (20) and 17.50(a) (2) of the DTPA.
- F. Nationwide's actions are unconscionable in that Nationwide took advantage of Plaintiffs' lack of knowledge, ability, and experience to a grossly unfair degree. Nationwide's unconscionable conduct gives Plaintiffs a right to relief under section 17.50(a) (3) of the DTPA; and
- G. Nationwide's conduct, acts, omissions, and failures, as described in this petition, are unfair practices in the business of insurance in violation of section 17.50(a)(4) of the DTPA.

- 51. Each of the above-described acts, omissions, and failures of Nationwide is a producing cause of Plaintiffs' damages. All of Nationwide's acts, omissions, and failures were committed "knowingly" and "intentionally," as defined by the Texas Deceptive Trade Practices Act.

#### **FRAUD**

- 52. Nationwide is liable to Plaintiffs for common law fraud.
- 53. Every misrepresentation described above concerned material facts that absent such representations, Plaintiffs would not have acted as they did, and Nationwide knew the representations were false or made recklessly without any knowledge of their truth as a positive assertion.

54. Nationwide made these statements intending that Plaintiffs act upon them. Plaintiffs then acted in reliance upon these statements, thereby causing Plaintiffs to suffer injury constituting common law fraud.

**CAUSES OF ACTION AGAINST DEFENDANT CURTIS MARTIN**

**NONCOMPLIANCE WITH THE TEXAS INSURANCE CODE:  
UNFAIR SETTLEMENT PRACTICES**

55. Martin's conduct constitutes multiple violations of the Texas Insurance Code, Unfair Claim Settlement Practices Act. TEX. INS. CODE §541.060(a).
56. Martin is individually liable for his unfair and deceptive acts, irrespective of the fact that he was acting on behalf of Nationwide, because Martin is a "person," as defined by TEX. INS. CODE §541.002(2).
57. Martin's unfair settlement practice of failing to attempt in good faith to make a prompt, fair, and equitable settlement of the claim, even though liability under the Policy was reasonably clear, constitutes an unfair method of competition and a deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(a) (2) (A).
58. Martin's unfair settlement practice of failing to provide Plaintiffs a prompt and reasonable explanation of the basis in the Policy, in relation to the facts or applicable law, for partial denial of the claim, also constitutes an unfair method of competition and an unfair and deceptive act or practice. TEX. INS. CODE §541.060(a) (3).
59. Martin knowingly underestimated the amount of damage to the Property. As such, Martin failed to adopt and implement reasonable standards for the investigation of the claim arising under the Policy. TEX. INS. CODE §542.003(3).

60. Furthermore, Martin did not attempt in good faith to effect a fair, prompt, and equitable settlement of the claim. TEX. INS. CODE §542.003(4).

#### **DTPA VIOLATIONS**

61. Martin's conduct constitutes multiple violations of the Texas Deceptive Trade Practices Act ("DTPA"), TEX. BUS. & COM. CODE 17.41-63. Plaintiffs are consumers of goods and services provided by Martin pursuant to the DTPA. Plaintiffs have met all conditions precedent to bringing this cause of action against Martin. Specifically, Martin's violations of the DTPA include the following matters:

- A. By his acts, omissions, failures, and conduct, Martin has violated sections 17.46(b)(2), (5), and (7) of the DTPA. Martin's violations include, (1) failure to give Plaintiffs the benefit of the doubt, and (2) failure to write up an estimate reflecting the proper repair of Plaintiffs' Property when liability has become reasonably clear, which gives Plaintiffs the right to recover under section 17.46(b)(2).
- B. Martin represented to Plaintiffs that the Policy and his adjusting and investigative services had characteristics or benefits they did not possess, which gives Plaintiffs the right to recover under section 17.46(b)(5) of the DTPA.
- C. Martin represented to Plaintiffs that the Policy and his adjusting services were of a particular standard, quality, or grade when they were of another, in violation of section 17.46(b)(7) of the DTPA.
- D. Martin's actions are unconscionable in that Martin took advantage of Plaintiffs' lack of knowledge, ability, and experience to a grossly unfair degree. Martin's



unconscionable conduct gives Plaintiffs a right to relief under section 17.50(a)(3) of the DTPA; and

E. Martin's conduct, acts, omissions, and failures, as described in this petition, are unfair practices in the business of insurance in violation of section 17.50(a)(4) of the DTPA.

62. Each of Martin's above-described acts, omissions, and failures is a producing cause of Plaintiffs' damages. All acts, omissions, and failures were committed "knowingly" and "intentionally" by Martin, as defined by the Texas Deceptive Trade Practices Act. TEX. BUS. & COM. CODE 17.45.

#### **KNOWLEDGE**

63. Defendants made each of the acts described above, together and singularly, "knowingly," as defined in the Texas Insurance Code, and each was a producing cause of Plaintiffs' damages described herein.

#### **WAIVER AND ESTOPPEL**

64. Defendants waived and are estopped from asserting any coverage defenses, conditions, exclusions, or exceptions to coverage not contained in any reservation of rights letter to Plaintiffs.

#### **DAMAGES**

65. The damages caused to the Property have not been properly addressed or repaired since the claim was made, causing further damage to the Property, and undue hardship and burden to Plaintiffs. These damages are a direct result of Defendants' mishandling of Plaintiffs' claims in violation of the laws set forth above.

66. Plaintiffs currently estimate that actual damages to the Property under the Policy are \$37,628.45.
67. Plaintiffs would show that all of the aforementioned acts, taken together or singularly, constitute the producing causes of the damages sustained. The above described acts, omissions, failures, and conduct of Defendants have caused Plaintiffs' damages, which include, without limitation, the cost to properly repair Plaintiffs' Property and any investigative and engineering fees incurred.
68. For breach of contract, Plaintiffs are entitled to regain the benefit of their bargain, which is the amount of their claim, consequential damages, together with attorney's fees.
69. For noncompliance with the DTPA and Texas Insurance Code, Unfair Settlement Practices, Plaintiffs are entitled to actual damages, which include the loss of benefits owed pursuant to the Policy, mental anguish, court costs, and attorney's fees. For knowing and intentional conduct of the acts described above, Plaintiffs ask for three (3) times their actual damages. TEX. INS. CODE §541.152 and TEX. BUS. & COM. CODE 17.50(b) (1).
70. For noncompliance with Texas Insurance Code, Prompt Payment of Claims, Plaintiffs are entitled to the amount of their claim, plus an eighteen percent (18%) per annum penalty on that claim, as damages, as well as pre-judgment interest and reasonable attorney's fees. TEX. INS. CODE §542.060.
71. For breach of the common law duty of good faith and fair dealing, Plaintiffs are entitled to compensatory damages, including all forms of loss resulting from Defendants' breach of duty, such as additional costs, economic hardship, losses due to the nonpayment of the amount Nationwide owed, exemplary damages, and damages for emotional distress.

72. Defendants' breach of the common law duty of good faith and fair dealing was committed intentionally, with a conscious indifference to Plaintiffs' rights and welfare, and with "malice," as that term is defined in Chapter 41 of the Texas Civil Practices and Remedies Code. These violations are the type of conduct which the State of Texas protects its citizens against by the imposition of exemplary damages. Therefore, Plaintiffs seek the recovery of exemplary damages in an amount determined by the finder of fact sufficient to punish Defendants for their wrongful conduct, and to set an example to deter Defendants and others from committing similar acts in the future.
73. For fraud, Plaintiffs are entitled to recover actual and exemplary damages for knowingly fraudulent and malicious representations, along with attorney's fees, interest, and court costs.
74. For the prosecution and collection of this claim, Plaintiffs have been compelled to engage the services of the attorneys subscribed to this pleading. Therefore, under Chapter 38 of the Texas Civil Practices and Remedies Code, sections 541 and 542 of the Texas Insurance Code, and section 17.50 of the DTPA, Plaintiffs are entitled to recover a sum for the reasonable and necessary services of Plaintiffs' attorneys in the preparation and trial of this action, including any appeals to the Court of Appeals and/or the Supreme Court of Texas.
75. As required by Rule 47(b) of the Texas Rules of Civil Procedure, Plaintiffs' counsel states that the damages sought are in an amount within the jurisdictional limits of this Court. As required by Rule 47(c)(3) of the Texas Rules of Civil Procedure, Plaintiffs' counsel states that Plaintiffs seek only monetary relief of no less than \$100,000.00, but no more than \$200,000.00, including damages of any kind, penalties, costs, expenses, pre-judgment

interest, and attorney fees. A jury will ultimately determine the monetary relief actually awarded, however. Plaintiffs also seek pre-judgment and post-judgment interest at the highest legal rate.

#### **REQUESTS FOR DISCLOSURE**

76. Under Texas Rules of Civil Procedure 190 and 194, Plaintiffs request that Defendants disclose, within fifty (50) days from the date this request is served, the information or material described in Rules 190.2(b)(6) and 194.2.

#### **JURY DEMAND**

77. Plaintiffs hereby request a jury trial for all causes of action alleged herein, tried before a jury consisting of citizens residing in Montgomery County, Texas. Plaintiffs hereby tender the appropriate jury fee.

#### **PRAYER**

Plaintiffs pray that Defendants, Nationwide Property and Casualty Insurance Company and Curtis Martin, be cited and served to appear, and that upon trial hereof, Plaintiffs, Patrick and Elaine Schroder, recover from Defendants, Nationwide Property and Casualty Insurance Company and Curtis Martin, such sums as would reasonably and justly compensate Plaintiffs in accordance with the rules of law and procedure, as to actual, consequential, and treble damages under the Texas Insurance Code and Texas Deceptive Trade Practices Act, and all punitive, additional, and exemplary damages as may be found. In addition, Plaintiffs request the award of attorney's fees for the trial and any appeal of this case, for all costs of Court expended on Plaintiffs' behalf, for pre-judgment and post-judgment interest as allowed by law, and for any other relief, at law or in equity, to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

CHAD T WILSON LAW FIRM PLLC

By: /s/ Chad T. Wilson

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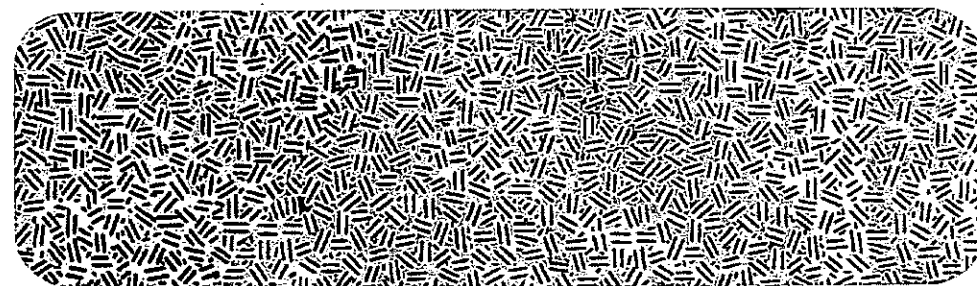
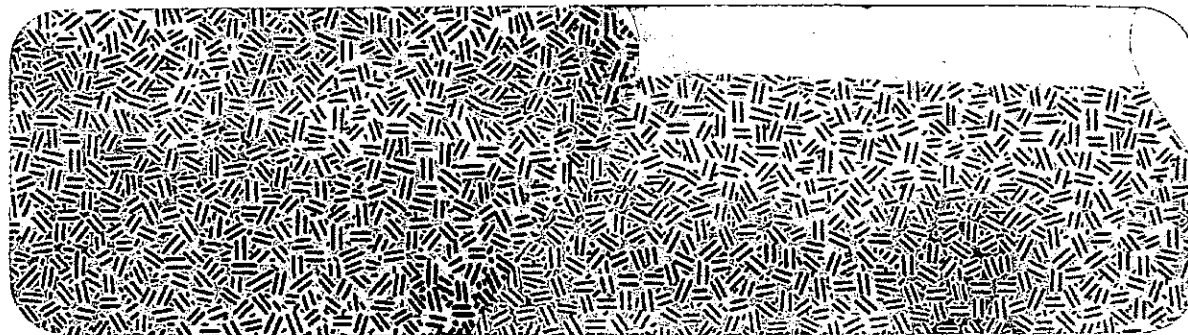
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ATTORNEYS FOR PLAINTIFFS

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CAUSE NO. 15-11-12639

PATRICK AND ELAINE  
SCHROEDER

Plaintiffs,

VS.

NATIONWIDE PROPERTY AND  
CASUALTY INSURANCE and CURTIS  
MARTIN

Defendants.

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IN THE JUDICIAL DISTRICT COURT

MONTGOMERY COUNTY, TEXAS

284<sup>TH</sup> JUDICIAL DISTRICT COURT

**DEFENDANTS', NATIONWIDE PROPERTY & CASUALTY INSURANCE COMPANY  
AND CURTIS MARTIN, ORIGINAL ANSWER**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, NATIONWIDE PROPERTY & CASUALTY INSURANCE COMPANY and CURTIS MARTIN, Defendants in the above styled and numbered cause, and file this, their Original Answer to the Plaintiffs' Original Petition, and in support thereof, would respectfully represent and show unto the Court the following:

**I.  
GENERAL DENIAL**

1. Subject to and expressly without waiving any conditions, terms, or policy defenses, Defendants assert a general denial to the material allegations contained in Plaintiffs' Original Petition or latest amended Petition as is authorized by Rule 92 of the Texas Rules of Civil Procedure, and demands Plaintiffs be required to prove their charges and allegations against Defendant by a preponderance of the evidence as is required by the Constitution and laws

of the State of Texas, as well as substantive and procedural laws of the United States, or otherwise, as may be appropriate.

**II.  
SPECIFIC DENIALS**

2. Defendants specifically deny they engaged in violations of the Texas Insurance Code or the Texas Deceptive Trade Practices Act, and further deny they are liable for damages under those statutes or that it is liable for exemplary damages.

**III.  
AFFIRMATIVE DEFENSES**

3. Further answering, Defendants assert with respect to Plaintiffs' claim or any potential claim for punitive damages, any award of punitive damages must be limited to the greater of: (1) two times the amount of economic damages plus an amount equal to any non-economic damages found by the jury, not to exceed \$750,000; or (2) two times the amount of economic damages plus \$200,000, pursuant to the statutory mandates of Texas Civil Practice & Remedies Code §41.002-41.009, including the increased burden of proof.

4. Further answering, under Texas law an insured has a duty to read an insurance policy and is charged with knowledge of its contents. Defendants assert that any claim which is based upon a misrepresentation, inducement, or reliance on a representation fails as a matter of law, since Plaintiffs are charged with knowledge of the contents of all relevant policies at issue.

5. Further answering, Defendants assert there is no ambiguity in the contract as there is only one reasonable interpretation. *Am. Mfrs. Mut. Ins. Co. v. Schaefer*, 124 S.W.3d 154, 157 (Tex. 2003).



6. Further answering, Defendants assert Plaintiffs' damages, if any, are limited by the amount set forth in the Policy limitations provisions of the applicable Policy.

7. Defendants would further plead there is no coverage under the policy to the extent that any material misrepresentation or omission was made by an insured in obtaining such policy.

8. Defendants asserts all terms, conditions, provisions, limitations, requirements, and exclusions of the policy. No reference to specific terms, conditions, provisions, limitations, requirements, and exclusions of the policy in this pleading shall be interpreted to limit the generality of the foregoing or of the general provisions referenced in subsequent paragraphs. To the extent the policy provides additional rights, remedies, or options available to Defendants that are not pleaded in this answer, Defendants do not waive their right to invoke such provisions either contractually or by further pleading.

9. Defendants further alleges Plaintiffs' claim for pre-judgment interest is limited by the dates and amounts set forth in the following:

- Art. 5069-1.05 § 6, Tex. R. Civ. Stat;
- Chapter 304, Tex. Fin. Code; and
- Chapter 41, Tex. Civ. Prac. & Rem. Code

10. By way of further answer, Defendants made no material misrepresentation to Plaintiffs and no false representation to Plaintiffs. Accordingly, Plaintiffs' cause of action for misrepresentation must necessarily fail. Further answering, Defendants are not liable in whole or in part to Plaintiffs for any damages Plaintiffs may have suffered, which Defendants deny, because Defendants' actions or inactions were not a producing or proximate cause of damages, injury or loss suffered by Plaintiffs.

11. Defendants would assert that the Court should instruct the jury as to whether any recovery sought by the Plaintiffs is subject to federal or state income taxes.

12. Further answering, Defendants deny Plaintiffs' claim alleging bad faith against Defendant, as a *bona fide* controversy existed and continues to exist concerning the allegedly covered loss and Plaintiffs' entitlement to insurance benefits under the Policy. The duty of good faith and fair dealing is not breached by the existence of a *bona fide* controversy.

13. Further answering, Defendants assert Texas does not recognize a cause of action against an insurer or for common law negligence, common law fraud, misrepresentation or nondisclosure as breach of the duty of good faith and fair dealing is the only common law cause of action against an insurer. *Universe Life Ins. Co. v. Giles*, 881 S.W.2d 44, 53 n. 6 (Tex.App.-Texarkana 1994), *aff'd in part, rev'd in part*, 950 S.W.2d 48 (Tex.1997).

14. Defendants would further show the underlying claims are not covered under the policy to the extent such claims do not seek damages within the meaning of such policy.

15. Any coverage for the underlying claims to which Plaintiffs' current Petition refers may be barred, in whole or in part, by the provisions, terms, exclusions, conditions and limitations applicable to the alleged policy.

16. Defendants *reserve* the right to raise additional affirmative defenses and to supplement those asserted herein upon discovery of further information regarding Plaintiffs' claims and upon further investigation as to the provisions, terms and conditions of the policy.

**IV.**

**NOTICE OF DOCUMENTS TO BE USED AT TRIAL**

17. Pursuant to TEX. R. CIV. P. 193.7, Defendants hereby notify Plaintiffs of Defendants' intent to use all documents exchanged and produced between the parties including, but not limited to, correspondence, discovery responses, and deposition testimony and exhibits during the trial of this matter and in any motions for summary judgment.

WHEREFORE, PREMISES CONSIDERED, Defendants pray that upon final trial and hearing hereof, that no recovery be had from Defendants, but that Defendants goes hence without day and recover their costs, and for such other and further relief to which Defendants may be justly entitled and will ever pray.

Respectfully submitted,

**WALTERS, BALIDO & CRAIN, L.L.P.**

BY: /s/Randall G. Walters

RANDALL G. WALTERS – 20819480

randy.walters@wbclawfirm.com

Service of Documents:

WaltersEDocsNotifications@wbclawfirm.com

Meadow Park Tower, Suite 1500

10440 North Central Expressway

Dallas, Texas 75231

214/347-8381 – FAX

214/347-8380 – DIRECT

214/749-4805 – MAIN

**CERTIFICATE OF SERVICE**

This is to certify that on this 11<sup>th</sup> day of December 2015, a copy of the above and foregoing was served on all counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/Randall G. Walters  
RANDALL G. WALTERS